

August 23, 2022

VIA ECF

The Honorable Sarah L. Cave
United States District Court
Daniel Patrick Moynihan United States Courthouse
Southern District of New York
500 Pearl Street, Room 1670
New York, NY 10007-1312

Re: Joint Discovery Status Report in *Flynn et al v. Cable News Network, Inc.*, No. 1:21-cv-02587-GHW-SLC (S.D.N.Y.)

Dear Judge Cave:

Pursuant to the Court's Rule 26(f) Discovery Plan Report and Scheduling Order (ECF No. 58) and the Court's extension (ECF No. 62), Plaintiffs Jack and Leslie Flynn (the "Flynnns") and Defendant Cable News Network, Inc. ("CNN") respectfully submit this joint discovery status report. The parties have made the following progress on discovery:

The Flynnns filed this lawsuit on March 25, 2021. Dkt. 1. CNN moved to dismiss on June 21, 2021, the Flynnns opposed on July 6, 2021, and CNN replied in further support on July 13, 2021. Dkt. 17-19, 23, 26. On October 22, 2021, after oral argument, this Court found that CNN's motion to dismiss should be granted as to the Flynnns' defamation and false light claims but denied as to CNN's request for fees, costs, and expenses. Dkt. 38. The Flynnns then filed their objection to the Report and Recommendation and CNN replied. Dkt. 39-41. On December 16, 2021 Judge Woods adopted the Report and Recommendation in part and rejected it in part, holding the Flynnns' defamation claim against CNN should be dismissed, but the false light claim was adequately pleaded. After additional briefing by both parties, Judge Woods granted in part and denied in part CNN's motion for reconsideration and its motion for certification. Dkt. 65. Since February 2022 the parties have made the following discovery progress:

On February 9, 2022, the Flynnns served their first set of requests for production and interrogatories, and served second, third, and fourth sets of requests for production on June 21, 2022, June 28, 2022, and July 7, 2022, respectively. On February 28, 2022, CNN served its first set of requests for production and interrogatories and an amended first set of interrogatories on March 25, 2022. The Flynnns served their responses and objections to CNN's first set of discovery requests on April 9, 2022 and April 25, 2022. CNN served its responses and objections to the Flynnns' first, second, third, and fourth set of discovery requests on April 1, 2022; April 8, 2022; July 19, 2022; July 28, 2022; and August 8, 2022, respectively.

The parties have made multiple document productions. On April 8, 2022, CNN made its first document production, followed by its second document production on May 20, 2022, its third document production on June 28, 2022, and its fourth document production is forthcoming. On April 10, 2022, the Flynnns made their first document production, following by their second document production on June 19, 2022, their third document production on August 3, 2022, and

their fourth document production on August 5, 2022. CNN is waiting on Jack Flynn to produce his social media data and for Leslie Flynn to produce her Twitter data and a useable HTML file for her Facebook data. As background, counsel for CNN requested social media data in its initial requests for production and provided detailed instructions for how the Flynns should download their information, yet are still awaiting usable social media data from both. According to counsel for the Flynns, the Flynns followed CNN's download instructions, and obtained their social media data. Jack Flynn's social media files are currently being reviewed. The review is taking time due to the breadth of CNN's requests ("all" data from November 2016 to the present) and the large volume of social media data/files.

CNN has also served third-party subpoenas on various individuals and social media platforms. To date, CNN has served subpoenas for the production of documents from the following individuals: General Michael Flynn, Michael Flynn Jr., Joseph Flynn, and Mary Flynn O'Neill. CNN has also served subpoenas for the production of documents from the following entities: Facebook, Inc., Twitter, Inc., Instagram LLC, Reddit, Inc., Clouthub, Gab AI, Gettr USA, Parler, Rumble, and Telegram. Because most of these entities require consent from the user before providing their data, CNN has requested that the Flynns sign written consent forms, and where required by the entity, provide notarized copies. Counsel for the Flynns has provided consent forms for Gab AI, but has not provided the requested signed consent forms for Parler and Twitter. In light of this, CNN has been unable to receive social media data directly from these social media platforms. As with the Flynns, General Michael Flynn, Michael Flynn Jr., Joseph Flynn, and Mary Flynn O'Neill each downloaded their available social media data. Counsel for the Flynn family members is reviewing the voluminous data files. Upon the rolling completion of that review, all files will be produced.

The parties have engaged in productive meet and confer discussions to discuss various issues raised in their respective productions, responses and objections, and third-party discovery. The parties communicated their concerns over email and discussed their concerns over two Zoom videoconferences on July 25, 2022 and August 17, 2022. These meet and confer discussions have been mostly productive and remain ongoing. Counsel for CNN has addressed certain concerns with CNN's discovery responses, and has agreed to produce additional documents. There is one issue about which CNN has declared an impasse and informed counsel for the Flynns that it will be filing a letter-motion for a discovery conference: the Flynns' counsel should complete an independent review of the Flynns' documents pursuant to the Federal Rules of Civil Procedure Rule 26(g)(1)(A) and should re-produce authentic documents. Counsel for the Flynns has agreed to discuss the issue with the Flynns in an effort to resolve the matter without Court intervention.

The next deadline is for a settlement conference, which is to take place on or before September 1, 2022. The parties jointly request an extension of that deadline.

Dated: August 23, 2022
New York, New York

Respectfully Submitted,

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